VITO N. PALAZZOLO
Employee Relations Administrator
(213) 486-7600

December 24, 2018

To: Chief of Police

Re: Handling of Body Worn Video Activation Failures Discovered During Categorical Use-of-Force Incidents

Background

On December 18, 2019, the Los Angeles Police Protective League (LAPPL), contacted the Department to inquire as to whether the Department had changed Department policy as to how failures to activate Body Worn Video (BWV) would be handled. The information they had received was that a failure to activate BWV would be handled as an automatic personnel complaint (1.28). The LAPPL also pointed out that this change, if accurate, was done unilaterally without the required meet and confer process for such changes, in violation of the previous meet and confer process that established Professional Standards Bureau (PSB) Notice, dated August 27, 2015, titled "GUIDELINES FOR REVIEWS OF BODY WORN AND DIGITAL IN-CAR VIDO RECORDINGS" and that such action would warrant the filing of an Unfair Employee Relations Practice (UERP) with the City of Los Angeles Employee Relations Board.

Discussion

At the onset of the deployment of BWV, during 2014 and 2015, the Department entered a formal meet and confer process with the LAPPL to understand and agree on parameters of the change in work conditions the new technology would bring to the workforce. During the meet and confer process one of the major concerns the LAPPL brought forth is how the Department would handle failures to activate BWV when required. The concern was not about when an employee intentionally acts to circumvent the system by intentionally not activating the system when required or de-activating before completion of an incident, or disabling/tampering with equipment, but rather the unintentional failures.

The result of the formal meet and confer process was an agreement between the Department and the LAPPL on Special Order No. 12, dated April 18, 2015, titled "BODY WORN VIDEO PROCEDURES – ESTABLISHED" and the PSB Notice mentioned above. The PSB Notice specifically defines how unintentional activation failures are to be handled, and that progressive discipline (i.e.; counseling, comment card, Notice to Correct Deficiency, etc.) is to be used prior to initiating a "personnel complaint." The PSB Notice is also clear that intentional failures to activate the system or multiple unintentional failures to activate involving separate incidences are subject to a 1.28.

The parameters of the PSB Notice have not changed since its publishing; however, sometime in early 2017, an informal and undocumented practice was established requiring initiation of a 1.28 when a failure to activate BWV was discovered during a Categorical Use-of-Force (CUOF) investigation or adjudication. The intent of initiating a 1.28 was meant as a sure way means of tracking the violation and that appropriate corrective action was taken. This procedure was put into place without regard to the PSB Notice that was the subject of good faith bargaining with the LAPPL and is in violation of that agreement. The PSB Notice clearly does not differentiate types of incidents, like COUF, that would automatically require 1.28, absent an intentional act, a pattern of previous failures and a record of progressive discipline.

Recommendation

The practice of initiating a 1.28's for unintentional failures to activate BWV or Digital In-Car Video, absent a pattern and documented progressive discipline is in contradiction with the PSB Notice that was the result of good faith bargaining in a formal meet and confer process with a recognized bargaining unit. If the Department wishes to continue this practice, a UERP will be filed by the LAPPL, as they have already indicated they would do. The Department will not prevail before the City's Employee Relations Board, and it ultimately could culminate in a lengthy and costly legal battle. Additionally, the Department also risks losing credibility in future negotiations and not negotiating in good faith will harm the collaborative working relationship with the LAPPL and other affiliated bargaining units.

For these reasons I recommend the Department rescind initiating 1.28's for unintentional violations noted during CUOF incidents as a default. Since this practice was informal and not documented in a directive, the rescinding would be a verbal notice to the parties involved in the investigation and adjudication of CUOF incidents.

The initiation of a 1.28 may be appropriate in some circumstances and should continue to be used as a tool for corrective action when appropriate; however, a preliminary investigation as to whether the failure was intentional or whether a previous pattern and record of progressive discipline needs to be done first. It is also recognized that the Department needs a mechanism to ensure that a proper preliminary investigation is completed and appropriate action is taken when one of these incidents is discovered. The best way to accomplish this without initiating a 1.28 is to record the incident in a supervisory action item within TEAMS-II. In the action item the supervisor can record the findings of the preliminary investigation and what the most appropriate course of action should be, based on the findings, to include progressive discipline short of a 1.28.

Sir, I'm available to discuss further at your convenience.

cc:
Mr. Mark Smith, OIG
Mr. Richard Tefank, BOPC

Attachment: PSB Notice, Dated August 27, 2015

PROFESSIONAL STANDARDS BUREAU

NOTICE
13.5

August 27, 2015

TO: All Commanding Officers

FROM: Commanding Officer, Professional Standards Bureau

SUBJECT: GUIDELINES FOR REVIEWS OF BODY WORN AND DIGITAL IN-CAR VIDEO RECORDINGS

The Department is in the process of implementing the Body Worn Video (BWV) system and expanding the deployment of Digital In-Car Video (DICV) City-wide. Procedures for the use of BWV and DICV are outlined in Department Manual Sections 3/579.15, *Objectives of Body Worn Video*; and 3/579.13, *Digital In-Car Video System and Deployment*. The deployment of these video systems enhances the collection of evidence; assists officers with completing reports and providing court testimony; promotes accountability; assists in resolving complaints against officers; and provides additional information for officer evaluation, training and continuous improvement.

This Notice provides guidelines to assist commanding officers with determining appropriate and reasonable responses to possible misconduct and other deviations from established procedures discovered during the review of BWV/DICV recordings.

False and/or Misleading Statement Allegations

If the Department intentionally withholds an officer's Body Worn or Digital In-Car Video (BWV/DICV) footage from the officer before he or she is required to submit to an interview or complete an official report, the withheld video will not be used as the sole basis for an allegation of making a false and/or misleading statement unless the Department can establish that the officer made an intentionally false material statement.

When considering whether allegations of false and/or misleading statements are appropriate in any case involving BWV/DICV footage, the Department will consider the materiality of the discrepancy and factors that are reasonably likely to affect the officer's memory including the stress caused by the incident, the time elapsed between the incident and the interview, and fatigue. The Department will also take into account that a BWV/DICV recording may not include the full incident, the context of the incident known or understood by the officer at the time, the precise viewpoint or perspective of the officer, or what the officer heard.

> **Note:** It is not the intent of the Department to initiate complaints or frame additional allegations of false and/or misleading statements for discrepancies between an officer's memory of an incident and what is on the video recording unless there is a material discrepancy.

Conduct that May Constitute Minor Misconduct

Audits, Inspections and Compliance Reviews
When the Department conducts audits, inspections, or compliance reviews of BWV/DICV recordings and discovers activity that may constitute minor misconduct, the officer's actions in the BWV/DICV alone should not result in the initiation of a personnel complaint. Rather, the officer should receive counseling, training, an Employee Comment Sheet or a Notice to Correct Deficiencies to alert him or her and correct the behavior. An example of minor misconduct may be the use of profanity in tactical situations inconsistent with the Department's tactical directives or training.

Personnel Complaint, Use of Force and Pursuit Investigations
Conduct observed during the review of a BWV or DICV recording in connection with a personnel complaint, use of force or pursuit investigation should focus on the object of the review, and not broaden into minor misconduct allegations that were not part of the main inquiry. Consistent with the previous section, commanding officers must evaluate the facts and circumstances surrounding the incident and exercise appropriate judgment to determine if the officer should receive counseling, training, an Employee Comment Sheet or a Notice to Correct Deficiencies to alert the officer to correct the behavior.

> **Point of Emphasis:** Other conduct observed in a BWV/DICV recording connected with an audit, inspection, compliance review, personnel complaint, use of force investigation or pursuit investigation should not become the sole basis for framing additional allegations of minor misconduct. Framing additional allegations is appropriate when the actions of the employee could be considered serious misconduct.

Minor Tactical Deficiencies Discovered During Audits, Inspections, and Compliance Reviews

Special Order No. 12, 2015, Body Worn Video Procedures - Established, specifies that the objectives of the Department's BWV program include the ability to provide additional information for officer evaluation, training, and continuous improvement. When the Department conducts audits, inspections or compliance reviews of BWV/DICV recordings and discovers activity that does not constitute a substantial and unjustified deviation from Department tactical directives or training, the officer's actions in the BWV/DICV alone should not result in an Employee Comment Sheet, Notice to Correct Deficiencies or personnel complaint. Rather, the officer should receive counseling and/or training to alert the officer and reduce the risk of harm in future tactical incidents.

> **Note:** If the activity discovered constitutes a substantial and unjustified deviation from Department tactical directives or training, this provision does not apply. In these cases, commanding officers may use documented training in conjunction with an Employee Comment Sheet, Notice to Correct Deficiencies, or in the most severe cases a personnel complaint, to alert the officer and reduce the risk of harm in future tactical incidents.

Unintentionally Recorded Personal Communications

Department Manual Section 3/579.15, Objectives of Body Worn Video, states that "Body Worn Video equipment shall only be used in conjunction with official law enforcement and investigative activities involving members of the public. Body Worn Video shall not be used to record Department personnel during briefings, meetings, roll calls or while in private spaces such as locker rooms or restrooms." Similarly, as specified in Special Order No. 45, 2009, Digital In-Car Video System Use and Deployment - Pilot Program, the DICV system was not deployed "to monitor private conversations between Department employees." If, however, a sensitive personal communication between employees is recorded, the personal communication will not be used to initiate a personnel complaint investigation or used against an employee in the adjudication of a personnel complaint, or during any subsequent hearings, unless there is evidence of criminal or egregious misconduct.

Failure to Follow BWV/DICV Procedure During and After 90-Day Transition Period

During 90-Day Transition Period
During the 90-day transition period, in accordance with the Office of Operations and Office of Special Operations Orders, unintentional deviations in policy and procedure in the use and deployment of BWV/DICV will be considered training issues and, during the transition period, Department employees should receive non-documented counseling and training only. A TEAMS action item should not be generated.

> **Note:** Intentional acts to circumvent Department policy and procedure, such as intentionally not activating BWV/DICV when required, intentionally de-activating BWV/DICV prior to completion of an incident, disabling or tampering with BWV/DICV, is misconduct and will not be considered as a training issue.

After 90-Day Transition Period
Upon completion of the 90-day transition period, officers will be expected to be proficient in the use and deployment of BWV/DICV. For corrective action after the transition period, commanding officers should use progressive discipline for unintentional deviations, including counseling, training, Employee Comment Sheets, and Notices to Correct Deficiencies prior to initiating personnel complaints.

> **Note:** Multiple unintentional failures discussed during a single counseling or training session should be considered one incident and personnel complaints should not be initiated unless an Employee Comment Sheet and/or Notice to Correct Deficiencies has been issued previously. Commanding officers may consider the ratio of failures to the number of traffic/pedestrian stops made by the officer in relation to his/her peers within the division of assignment when deciding what corrective action is warranted.

Demonstrably False Allegations

Consistent with Department policy, all allegations of misconduct initiated by a member of the public must be recorded on a Complaint Form, Form 1.28. However, when a BWV/DICV recording clearly proves that an allegation of misconduct is Demonstrably False as defined in the

Department Manual, the allegation should be classified as Non-Disciplinary - Demonstrably False. Under those circumstances, accused and witness officers need not be interviewed regarding the Demonstrably False allegation(s).

Commanding officers should seek guidance from the Commanding Officer, Internal Affairs Group, (213) 485-1486, with any questions regarding the provisions of this Notice.

APPROVED:

DEBRA J. McCARTHY, Deputy Chief
Commanding Officer
Professional Standards Bureau

SEAN W. MALINOWSKI, Commander
Chief of Staff
Office of the Chief of Police

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